

November 13, 2003



Marlene H. Dortch  
Secretary  
Federal Communications Commission  
TW-A325  
445 Twelfth St., SW  
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WT Docket No. 03-66

Dear Ms. Dortch:

On November 13, 2003, Harold Feld, Associate Director, MAP, met with Jennifer Manner, Senior Counsel to Commissioner Abernathy.

Mr. Feld's comments are primarily summarized in the attached talking points, a copy of which was left with Ms. Manner. In addition, Mr. Feld stated that NAF, *et al.* support Earthlink's support position on cross-ownership limits. Ms. Manner asked why such limits would be necessary or productive, given that ILECs have in the past tried to use this spectrum to compete with cable companies and that, therefore, ILEC use of the spectrum might enhance competition. Mr. Feld replied that the *NPRM* at issue here explicitly found the residential broadband market "highly concentrated" with an HHI of 5500-6000, and that most residential subscribers faced a duopoly of cable/ILEC for broadband. Cross-ownership limits are therefore necessary to ensure at least one more competitive broadband provider. Ms. Manner asked if eligibility requirements prohibiting ILECs and incumbent cable operators from acquiring the spectrum at auction would serve the same purpose. Mr. Feld replied that if the Commission extends the *Secondary Market Order* to MDS/ITFS spectrum, then, in the absence of cross-ownership, ILECs or MSOs could immediately monopolize the spectrum from licensees.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted

Harold Feld  
Associate Director  
Media Access Project

cc: Jennifer Manner